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Item 9 of the provisional agenda

THE ADMINISTRATION OF JUSTICE AND THE HUMAN RIGHTS OF DETAINEES

Written statement submitted by the International Federation of Action by Christians for the Abolition of Torture (IFACAT), a non-governmental organization in special consultative status with the Economic and Social Council

The Secretary-General has received the following written statement, which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[21 July 1997]

Torture at the heart of the judicial process

1. The existence of a few "democratic institutions" such as have just been set up by the Peruvian Government as a result of the international pressure to which it has been subjected is not enough. True democratic progress requires actual respect for the rule of law and international instruments. To tolerate, and even encourage, the use of torture, including torture in the judicial process, frustrates any movement towards democracy.

2. As an example, IFACAT wishes to draw the attention of members of the Sub-Commission to the administration of justice in Peru, where, in this particular field, violations of human rights are growing in number. Torture has become systematic in the questioning of detainees and is practised with complete impunity by the police and the army. Conditions of detention are very harsh, and often violate prisoners' rights. Out of 20,000 detainees held in Peru, only 500 have had the right to a trial. This situation creates overpopulation in prisons, with very poor conditions as regards hygiene, health and food. The conditions of detention for political prisoners and prisoners of opinion are particularly severe (one visit a month, daily walk of 20 minutes, almost total isolation). Thirty-seven minors detained at the Minors' Rehabilitation Centre have been transferred to the high-security prison for adults at Quengoro. The Peruvian Government is in the process of correcting the judicial mistake it made with regard to the "detenidos inocentes" (prisoners charged and convicted unjustly) by granting them a presidential pardon. So far 226 detainees have been released.

3. Violations of the freedom of the press and of opinion are at present on the increase, including threats, attacks and harassment directed at journalists, owners of television channels and members of the Congress. The reason may be the recent emergence of a political opposition.

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QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, INCLUDING POLICIES OF RACIAL DISCRIMINATION AND SEGREGATION AND OF APARTHEID, IN ALL COUNTRIES, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES: REPORT OF THE SUB-COMMISSION UNDER COMMISSION ON HUMAN RIGHTS RESOLUTION 8 (XXIII)

Written statement submitted by the International Federation of Action by Christians for Abolition of Torture, a non-governmental organization in special consultative status with the Economic and Social Council

The Secretary-General has received the following written statement, which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[21 July 1997]

Torture used to terrorize the population

1. The international community should refuse to let itself get accustomed to the use of torture and serious violations of the dignity of the human person as a mode of government currently practised by certain States. The International Federation of Action by Christians for Abolition of Torture (IFACAT) wishes to draw the attention of members of the Sub-Commission to such practices in certain countries, while realizing that they also exist in many others as well.

Mexico

2. IFACAT is alarmed by the extent to which torture is prevalent in Mexico. It is used as a method of investigation by the police and the army. It is also a means of intimidation and punishment in the struggle against subversion, particularly in the regions of Guerrero and Chiapas. Despite the existence of laws against the use of torture, the behaviour of the armed forces and the police and the practice of the courts, which accept confessions and testimony obtained by torture, render this legislation null and void.

Colombia

3. IFACAT is greatly concerned at the massive violations of human rights committed by the army and paramilitary groups in Colombia. They affect trade-union leaders, human rights activists, political opponents and the civilian population of villages. In some rural areas, the civilian population are the victims of particularly brutal repression. They have to suffer forced resettlement, carried out under threat and in a climate of general terror, murders, massacres, disappearances and attacks committed by paramilitary groups, self-defence groups and rural security cooperatives (who have a duty to inform the Government on the guerrilla situation), but also by guerrilla fighters. The peasants find themselves caught between guerrilla violence and the army's counter-measures.

4. Despite repeated appeals by the international community to the Colombian authorities, no effective steps have been taken to dismantle the paramilitary groups operating with the support and under the coordination of the security forces, nor to prosecute those responsible for human rights violations. There is impunity in over 90 per cent of human rights violations. The absence of any attempt to deal with the matter is reflected in the continuance of serious violations of fundamental rights and strengthens IFACAT's constant fears for the safety of the civilian population.

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CONTEMPORARY FORMS OF SLAVERY

Written statement submitted by Human Rights Advocates, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[23 July 1997]

GE.97-13082 (E)

The exploitation of child labour and human rights

1. Human Rights Advocates (HRA) considers the exploitation of child labour to be a contemporary form of slavery. As such, HRA is gravely concerned at the continuing human rights abuses associated with the exploitation of child labour and seeks to find ways to eliminate this practice.

2. In 1993, after examining reports submitted by the Working Group on Contemporary Forms of Slavery, the Commission on Human Rights adopted a Programme of Action for the Elimination of the Exploitation of Child Labour. 1/ The Programme envisages a wide range of activities in the fields of information-gathering and awareness-raising, education and training, social action and legislation at the local, national and international levels, to combat the exploitation of child labour. Furthermore, the work of the Special Rapporteur on the sale of children, child prostitution and child pornography and the Working Group on Contemporary Forms of Slavery have increased awareness about the exploitation of child labour.

3. However, four years after the adoption of the Programme of Action, the exploitation of child labour is still prevalent in many regions of the world, particularly in poorer nations. Despite commendable efforts of the Special Rapporteur and the Working Group in raising awareness of this ongoing problem, their mandates are not specifically tailored to the particular issue of the exploitation of child labour, which in its most egregious form includes slavelike practices such as debt bondage and forced child labour. It is now essential to determine what further actions and procedures must be adopted by the Sub-Commission to make progress in curtailing human rights violations arising from the exploitation of child labour.

4. Virtually every country in the world has national laws that limit the extent to which children may be employed. International treaties and conventions bar children from performing work that is hazardous, that interferes with a child's education, or that harms a child's health, or physical, mental, spiritual or moral development. Nevertheless, the exploitation of child labour is still a widespread phenomenon.

5. Though primarily a problem in developing countries, child labour also exists in many industrialized countries and is emerging in many countries which are in transition to a market economy. 2/ The International Labour Organization reports that most statistical surveys on child labour cover only children aged 10 and above. 3/ However, many children begin work at an earlier age. In rural areas, children, in particular girls, tend to begin working at the age of five, six or seven. 4/

6. Poverty is often sited as an important reason for the existence of child labour. 5/ However, although it may be a reason why children work, it cannot be said that poverty causes child labour. Often, the practice is rooted in traditions, attitudes and customs. 6/ There are regions in poor countries where child labour is virtually abolished. 7/ Furthermore, underdevelopment cannot justify the exploitation of children. The international community as a whole must not wait for adequate solutions to the long-term development problems of certain countries before attacking the human rights abuses

resulting from the exploitation of child labour. The Sub-Commission has a unique role in ensuring that high priority is given to the elimination of child labour exploitation, as well as in securing and implementing fundamental human rights.

Human rights violations resulting from the exploitation of child labour

7. Despite the existence of international treaties and conventions protecting the rights of children against abusive labour practices, ongoing violations confirm the need for the international community to take further action to address this problem.

8. Bonded child labour is one form of slavery still prevalent in some countries today. In these countries, children are pledged into bonded labour by their families in exchange for money or credit. Children thus become a commodity, pledged as chattel to pay off debts. In some cases, employers take advantage of the poverty of the family and offer large loans to the parents against their children's future labour, knowing that the parents will never be able to repay the debt. 8/

9. Child domestic workers, usually girls as young as five or six years old from poor rural families, are routinely forced to endure severe physical and sexual abuse at the hands of their employers. 9/ Reports from various sources have documented incidences of child domestic servants being beaten, branded, starved, burned or tortured to death by their employers. 10/

10. The use of forced child labour has been documented in certain regions of the world. 11/ Many cases were reported in regions where foreign companies were prospecting for oil and gas or financing projects for tourism. 12/

11. Children not only suffer at the hands of their employers, but also from the dangerous nature of their working conditions. Tens of millions of child workers are exposed to serious health and safety hazards through the dangerous nature of their work or because of poor working conditions. 13/ In certain cases, as a result of exposure to chemical and biological hazards on a daily basis, many child workers suffer serious injuries or illnesses, resulting in amputation or mutilation. 14/

12. Because they are physiologically more fragile than adults, children are much more vulnerable to hazardous working conditions. Children carrying heavy loads or maintaining awkward body positions for long hours develop deformities of the spinal column and pelvis from the excessive stress placed on their bones. 15/

Violations of human rights

13. The continuing exploitation of child labour results in gross violations of the Convention on the Rights of the Child, as well as fundamental human rights protected by the Slavery Convention, the International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights.

14. The Convention on the Rights of the Child prohibits the economic exploitation of children and work that is likely to be hazardous to their physical, mental, spiritual or moral well-being. Nevertheless, the millions of children forced into hazardous work attest to continuing violations of the most widely adopted human rights treaty in existence.

15. Today, it is universally recognized that no one should be held in slavery or servitude, that slavery in all its forms should be prohibited. However, this crime against humanity still exists in various parts of the world in the form of bonded and forced child labour.

16. The right to be free from torture or cruel, inhuman or degrading treatment is universally accepted as a fundamental non-derogable human right, and is protected by conventional and customary international law. Child labour in its most egregious forms may be tantamount to cruel, inhuman or degrading treatment.

17. Although the right to education is a fundamental human right, working children are denied the opportunity to obtain the education they need for their intellectual development.

18. The exploitation of child labour may violate other human rights embodied in treaties and other international instruments, such as the rights to life, to health and to culture.

Recommendations to the Sub-Commission

19. HRA urges the Sub-Commission to expand the present mandate of the Working Group on Contemporary Forms of Slavery to look into the exploitation of child labour in the following ways:

(i) The expanded mandate should cover the specific issues of debt bondage and forced child labour, paying particular attention to the plight of domestic child workers and children in hazardous occupations.

(ii) The Working Group's expanded mandate should entail the submission of annual reports by Governments to the Sub-Commission, including recommendations and proposals for action at the international, national and local levels. These recommendations should be made in the light of critical evaluations by the Working Group of States' efforts to implement the Programme of Action for the Elimination of the Exploitation of Child Labour.

(iii) The expanded mandate should identify ways in which improved communication and better coordination between all the entities within the United Nations system directly concerned with the question of child labour could be achieved.

20. In addition, HRA urges the Sub-Commission to recommend to the Commission-appointed Working Group on a draft optional protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography to expand the application of article 33 of the Convention to cover all forms of exploitation of child labour.

Notes

1/ Commission on Human Rights resolution 1993/79, annex.

2/ International Labour Organization 1996 Press Releases, "ILO calls for immediate action against intolerable forms of child labour", ILO/96/38 (1996).

3/ International Labour Organization, Child Labour: Targeting the Intolerable (1996).

4/ Idem.

5/ Timothy A. Glut, "Changing the approach to ending child labour: an international solution to an international problem", The Vanderbilt Journal of Transnational Law, vol. 29 (1995).

6/ Baban Hasnat, "International trade and child labour", Journal of Economic Issues, vol. 29 (1995).

7/ International Labour Organization, see note 2.

8/ Bureau of International Labor Affairs, U.S. Department of Commerce, By the Sweat & Toil of Children (Volume II): The Use of Child Labor in U.S. Agricultural Imports & Forced and Bonded Child Labor (1995).

9/ Report of the Working Group on Contemporary Forms of Slavery on its twentieth session (E/CN.4/Sub.2/1995/28).

10/ Bureau of International Labor Affairs, U.S. Department of Commerce, see note 8.

11/ Report of the Working Group on Contemporary Forms of Slavery on its twenty-first session (E/CN.4/Sub.2/1996/24).

12/ Idem.

13/ International Labour Organization, Amsterdam Child Labour Conference, Combating the Most Intolerable Forms of Child Labour: A Global Challenge (1997).

14/ International Labour Organization, see note 3.

15/ Idem.

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QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, INCLUDING POLICIES OF RACIAL DISCRIMINATION AND SEGREGATION AND OF APARTHEID, IN ALL COUNTRIES, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES: REPORT OF THE SUB-COMMISSION UNDER COMMISSION ON HUMAN RIGHTS RESOLUTION 8 (XXIII)

Written statement submitted by the American Association of Jurists, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement, which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[17 July 1997]

Summary of the report on the mission to Peru by the American Association of Jurists

1. The mission had two objectives:

(a) To try to establish the circumstances of the death of Mr. Carlos Ernesto Giusti Acuña, Judge of the Supreme Court of Justice of Peru and member of the advisory board of the American Association of Jurists, during the assault on the Japanese Embassy in Lima by units of the armed forces and of other deaths that occurred on the same occasion (14 members of the guerrilla group and 2 officers of the armed forces);

(b) To investigate the attacks on the independence and stability of the Constitutional Court and the majority of its members from government circles and senior officers of the armed forces.

2. On 11-13 May 1997, Mr. José Felipe Ledur of Brazil, President of the American Association of Jurists, and Mr. Beinusz Szmukler of Argentina, chairman of its advisory board, were in Lima. They had interviews with the following persons among others:

The children of Mr. Carlos Ernesto Giusti Acuña, Judge of the Supreme Court;

Mr. Serpa, member of the Supreme Court of Justice;

Mr. Miguel Aljovín Swayne, Attorney-General of the Nation.

Consequences of the assault on the Japanese Embassy in Lima

3. It should be noted that Mr. Giusti Acuña was someone who had been involved for a long time in the defence of human rights. Some years ago, during the Pinochet dictatorship, he undertook an observer mission to Chile on behalf of the American Association of Jurists, together with Mr. Szmukler.

4. It was impossible to establish the circumstances of his death, since even his children said they did not know whether an autopsy had been performed on their father's body. The Procurator-General of the Nation himself admitted that he did not know whether an investigation had been instituted into the events that occurred during the assault on the Embassy, whether a government procurator of lower rank was conducting an investigation, or whether autopsies had been carried out on the bodies of the persons who died.

5. For the same reasons, it was not possible to establish anything about the circumstances of the deaths of the two officers of the armed forces. Nevertheless, the mission heard a version (which it was unable to verify) according to which during the assault Mr. Giusti Acuña was hit by a bullet in the thigh, which caused heavy bleeding, and that he died because he was not given proper care as promptly as necessary, despite the fact that there were medical teams in the immediate area of the Embassy and a hospital very close by.

6. As regards the 14 members of the guerrilla group MRTA, all of whom died, it was possible to establish that the bodies of only 3 of them were handed over to their families, in closed coffins, which prevented any autopsies from being carried out. The other 11 were buried clandestinely, and their families are being denied information on where they were buried. Various sources insist that members of the guerrilla group who surrendered were summarily executed.

7. Among the hostages who were rescued, there were 30 who were wounded, almost all of them lightly, except Dr. Serpa, a member of the Supreme Court, whom the American Association of Jurists mission visited in the military hospital. At the time of the mission, he was in intensive care with stomach burns. He had already had one operation and was due to have another. The silence that has surrounded the case of Dr. Serpa is noteworthy.

8. The tunnel through which the assault on the Embassy was carried out was dug by 24 miners, who have since disappeared.

9. In conclusion, the results of the mission from this standpoint were very limited, since the persons interviewed seemed to be extremely frightened and preferred not to speak about the matter. Everything indicates that none of the measures that are required in such cases have been taken, and first of all judicial intervention to determine what actually occurred and who was responsible.

10. We cannot but note the fact that in the assault on the Embassy the only one of the hostages in the building to die and the only one to be seriously wounded had in common the fact that they were members of the Supreme Court of Justice of Peru.

Pressures and attacks on the Constitutional Court

11. Article 112 of the Peruvian Constitution states that the "President may be re-elected immediately for one more term. After a minimum of one further constitutional term has elapsed, the former President may again stand as a candidate, subject to the same conditions".

12. This rule prevents the present President, Mr. Fujimori, from standing for a new term in the next presidential elections, since he has already been re-elected once. However, the majority he has in the Congress has passed a law, No. 26657, under which:

> "The proper interpretation is that the provision on re-election in article 112 of the Constitution relates and applies to presidential terms of office begun after the date of the promulgation of the constitutional text in question. Consequently, the proper interpretation is that presidential terms started before the entry into force of the Constitution are not taken into account retroactively."

This is an instrument which does not meet the conditions necessary for it to be considered a "law", since it is not general in its application (it is a rule for one single individual), and one which in addition involves a violation of the Constitution, since under the Peruvian system the power to interpret the Constitution is vested in the judiciary.

13. The Lima College of Lawyers applied to the Constitutional Court to have this law declared unconstitutional. The way in which this request was handled revealed the limitation imposed by the Congress through the law regulating the Court, which makes it impossible, in the present circumstances and with the present composition of the Court, for laws to be declared unconstitutional and paralyses the activity of the organ responsible for supervising the observance of the Constitution. The regulatory law provides that the Constitutional Court is to be composed of seven members and that six of them must vote in favour for a law to be declared unconstitutional. Two of the members of the Court are unconditional supporters of the Executive, so that it was impossible to secure the six votes necessary for a declaration of unconstitutionality.

14. The majority of the members of the Court considered, and said so in the grounds for the judgement, that the law was unconstitutional, but not having the number of votes required by the regulatory law, they opted for the exercise of generalized supervision of constitutionality, which, in their view, was a power enjoyed by all judges, and, with reference to the case in question, declared that the re-election law was inapplicable.

15. The College of Lawyers submitted a petition for clarification and the Plenum of the Court decided that a decision should be taken on this petition by the four judges who had given the judgement. They rejected the plea for clarification on the grounds that the judgement was sufficiently clear. From that point on, an extraordinary situation came into being.

16. Some time ago, Ms. Delia Revoredo, a member of the Constitutional Court, complained of the removal of court documents, attempts to pressure her and other members of the Court and other irregularities making it difficult for the Court to operate, the responsibility for which was alleged to lie with its two members who were openly government supporters, Francisco Acosta Sánchez and José García Marcelo. To examine these complaints, the Congress appointed a Commission of Investigation, which - as was to be expected, given its composition - concluded that neither the removal of documents nor the attempts to apply pressure had been substantiated. However, what is just as serious, or even more so, is that the Commission, blatantly exceeding its terms of reference, brought proceedings against Ms. Revoredo and tried to remove her from office, together with the majority of the members of the Court, for alleged usurpation of the functions of the Plenum of the Court, by having dealt with the question of the clarification without the plenary having been convened or having considered the matter, which, as has been shown, was false. This was a political manoeuvre against the majority in the Court. Even if the accusation were true, the question would be an internal matter for the Court, which could result in a decision by the Plenum declaring the rejection of the petition for clarification null and void, which would not modify the principal finding that the re-election law was inapplicable.

17. Peruvian constitutionalists have been unanimous in declaring that the proceedings instituted by the Commission of the Congress violate the constitutional provision providing that members of the Constitutional Court may not be harassed or proceeded against because of the content of their judgements.

18. One member of the Commission of Investigation confirmed that the intention was to paralyse the Court, because "the Government cannot govern with the Constitutional Court ... we are the first power in the State and we are not going to allow three persons to govern Peru" (Temas del Mundo, 15 May 1997).

19. Attempts have also been made to remove the most senior government procurator from office. The Supreme Court of Justice ruled in favour of two applications for habeas corpus. In the first decision, it ordered that a drug-trafficker should have his right to receive visits restored, which he had been deprived of for having committed the additional "offence" of declaring that he was paying $55,000 a month to the presidential adviser Wladimir Montesinos. The other habeas corpus decision ordered the suspension of proceedings in the military court against a civilian accused of having defrauded the army in the collection of insurance premiums. Both orders by the country's highest court were disobeyed. Consequently, the Procurator-General, doing his duty, indicted the military judges. General Guevara's reply was to institute criminal and constitutional actions against the procurator for "abusing his authority, exceeding his powers with infringement of the judicial function and perverting the course of justice". According to General Guevara, no application for habeas corpus can interfere with the workings of military justice.

20. Dr. Ricardo Nugent, President of the Constitutional Court, one of the country's most distinguished lawyers, has argued that if the attempt to bring proceedings against the majority of members of the Constitutional Court and remove them from office is successful, it will mean "digging the grave of the rule of law".

21. The American Association of Jurists considers that the liquidation of the rule of law is already well advanced in Peru. An attempt is now being made to eliminate the last bastions of institutional resistance: the Constitutional Court and the office of Procurator-General of the Nation.

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Written statement submitted by Caucasians United for Reparations and Emancipation/All for Reparations and Emancipation, a non-governmental organization on the Roster

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[8 July 1997]

1. With reference to the report of the Special Rapporteur, Mr. Maurice Glélé-Ahanhanzo, on his mission to the United States of America in 1994 (E/CN.4/1995/78/Add.1), the Special Rapporteur accurately informed the Commission on Human Rights that the human rights of African Americans have been violated from the establishment of the United States until the present day. However, the Special Rapporteur states that racism may not now be a deliberate policy on the part of the United States Government. We seek to

inform the United Nations that the report did not express the bitterness of the African-American people and their sincere belief that racial discrimination is a deliberate policy. Because of the exhaustion of domestic remedy, there now exists a belief that racial discrimination will never cease. This belief is confirmed by the failure of African-American leaders in the United States Congress to gain permission from the Caucasian majority for a study of slavery to determine whether reparations are due.

2. In 1993 a highly respected African-American leader delivered a "1503" communication to the Working Group on Communications on behalf of African Americans. This communication, delivered by the Honourable Silis Muhammad, leader of the Lost Found Nation of Islam, was not forwarded to the Sub-Commission because it did not prove a consistent pattern of human rights violations. We believe the United Nations knows that a consistent pattern of human rights violations is already a matter of African, European and American history, brought up to the present and verified by the aforementioned Special Rapporteur. The African-American population is becoming aware that their "1503" communication was rejected by the Working Group and therefore ignored by the United Nations. This awareness adds to the already existing belief that racial discrimination will never cease.

3. Making reference to the recent remarks of United States President Bill Clinton wherein he mentioned the possibility of an apology for slavery, we seek to inform the United Nations that the masses of African Americans feel that an apology is not enough, while the masses of Caucasian Americans feel there is no reason to apologize. In monitoring the African-American press and Internet communications, we have observed that African Americans do not believe President Clinton has the interest of justice at heart. African Americans have seen the United States Government strike down affirmative action and special preferences in universities and law schools, some of which now have a 100 per cent Caucasian enrolment. They have also seen that the United States judicial system continues to imprison African-American men at 10 times the rate of Caucasian men and execute the death penalty at the same rate. Now, after President Clinton's remarks, they see that Caucasian Americans can conceive of no reason even to apologize for slavery.

4. The prayers of African Americans for justice and reparations have been been rejected by the United States Government and, seemingly, by the United Nations. Because the struggle seems hopeless, the African-American population has reached a state of extreme anxiety. We observe that some leaders are considering changing their tactics because of the failure of peaceful and legal means of solving the problem. We believe that African Americans may decide to use extreme measures and thereby gain the attention of the world community. We fear that the United States Government may respond with imprisonment of African-American leaders. We ask the United Nations to respond to our communication by establishing a meeting wherein African-American leaders (those who are not under the authority of the United States Government) can speak to the United Nations human rights authorities candidly and privately about the desperate plight of African Americans.